



KRONENBERGER ROSENFELD, LLP

Karl S. Kronenberger (Bar No. 226112)
Jeffrey M. Rosenfeld (Bar No. 222187)
Virginia A. Sanderson (Bar No. 240241)
150 Post Street, Suite 520
San Francisco, CA 94108
Telephone: (415) 955-1155
Facsimile: (415) 955-1158
karl@KRInternetLaw.com
jeff@KRInternetLaw.com
ginny@KRInternetLaw.com

BAILEY & GLASSER LLP

John Roddy (admitted *pro hac vice*)
125 Summer Street, Suite 1030
Boston, MA 02110
Telephone: (617) 439-6730
Facsimile: (617) 951-3954
jroddy@baileyglasser.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

EDWARD FIELDS, et al.

Plaintiffs,

vs.

WISE MEDIA, LLC, et al.,

Defendants.

CLASS ACTION

Case No. 3:12-cv-05160-WHA

**DECLARATION OF KEVIN
BREWSTER IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANT MBLOX, INC.'S
MOTION FOR SUMMARY JUDGMENT**

Date: July 11, 2013
Time: 8:00 a.m.
Cttrm: 8, 19th Floor
Judge: The Hon. William Alsup



1 I, Kevin Brewster, declare as follows:

2 1. I am a plaintiff in the above-captioned action. Unless otherwise stated, I
3 have personal knowledge of the matters stated herein.

4 2. I am married to Plaintiff Kimberly Brewster.

5 3. My wife, Plaintiff Kimberly Brewster, and I share a mobile phone service
6 plan. The monthly charges for my wife's and my mobile phones appear on a single bill.

7 4. Prior to learning about Defendants' misconduct at issue in this action, I had
8 never heard of any of the Defendants, LuvSwap, or the website located at
9 <www.luvswap.me>.

10 5. Prior to learning about Defendants' misconduct at issue in this action, I
11 never visited the website <www.luvswap.me>.

12 6. I am happily married, and I have no interest in receiving "flirting tips." I
13 have never enrolled in a flirting tip service and I have never authorized the sending of
14 flirting tip texts.

15 7. I have never entered my mobile phone number into a website in order to
16 receive flirting tips or any other premium text service.

17 8. I have never ticked any box on a website as part of an agreement to pay
18 for text messages regarding flirting tips.

19 9. I never sought to enroll in a subscription plan for flirting tips.

20 10. On September 14, 2012, I received an SMS text message from a five-digit
21 number, 530-29. The text advertised a flirting tips service (i.e., LuvSwap), which offered
22 3 flirting tip texts per week for a charge of \$9.99 per month.

23 11. I did not recognize the five-digit sender number or LuvSwap.

24 12. I had never authorized texts from 530-29.

25 13. Because I did not recognize the five-digit sender number and had no
26 interest in flirting tips services, I ignored the text.

27 14. My subsequent mobile phone bill contained a monthly subscription charge
28 dated September 14, 2012 for LuvSwap in the amount of \$9.99. The bill provided the

KRONENBERGER ROSENFELD

150 Post Street, Suite 520, San Francisco, CA 94108



1 information for the subscription provider as Wise Media. However, given the length of
2 this bill, I did not notice this unauthorized charge at the time I received the bill.

3 15. I again received texts from the five-digit sender number 530-29 on
4 September 25, October 5, and October 18.

5 16. My subsequent mobile phone bill again contained a monthly subscription
6 charge for LuvSwap in the amount of \$9.99.

7 17. Around this time, my wife and I noticed the unauthorized charges for
8 LuvSwap on our mobile phone bill.

9 18. My wife contacted Wise Media in an effort to obtain a refund for the
10 unauthorized charge. While a representative of Wise Media told my wife that she would
11 receive a paper check for the refund, my wife and I never received any refund from Wise
12 Media.

13 19. These charges for LuvSwap were completely unauthorized. I never had
14 any interest in LuvSwap. I never had any intent to sign up for LuvSwap. I never visited
15 the website <www.luvswap.me>. And I never took any action to sign up for LuvSwap.

16
17 I declare under penalty of perjury under the laws of the United States of America
18 that the foregoing is true and correct and that this Declaration was executed on
19 May 30, 2013

20
21 Kevin Brewster
Kevin Brewster (May 30, 2013)

22 Kevin Brewster
23
24
25
26
27
28